IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 36 of 2001

Date of Decision: 15.11.2006

Smt.Dhiro ...Petitioner

Vs.

Sadhu Singh ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Munishwar Puri, Advocate,
for the petitioner.

Mr.A.S.Gill, Advocate,
for the respondent.

Vinod K.Sharma, J.

This is an appeal against the judgment and decree passed by the learned Additional District Judge, Amritsar vide which the learned Additional District Judge, Amritsar was pleased to frame an additional issue and refer the matter back to the learned Trial Court to take additional evidence on the additional issue framed and to return the finding on the said issue.

Brief facts of the case are that the plaintiff-respondent had filed

a suit for declaration that he was owner in possession of the land in dispute. It was claimed that the plaintiff-respondent was owner of half share of suit land and his brother Ghasita Singh was owner of half share of suit land. It was also claimed that Ghasita Singh settled in Indonesia in the year 1938 and before leaving India he gave his half share of land to the plaintiff-respondent in a family settlement. It was claimed that Ghasita Singh was never married and he had no issue. The claim of the defendant-appellant that she was daughter of Ghasita Singh was denied. It was claimed that Ghasita Singh was married to one Dalip Kaur resident of Allowal in Indonesia but no issue was born out from the wedlock of Ghasita Singh with Dalip Kaur. The mutation sanctioned in favour of Ghasita Singh as sanctioned by the Revenue Court was also challenged being the outcome of impersonation. It was further claimed that Ghasita Singh is alive and as the defendant-appellant was threatening to dispossess the plaintiff therefore, suit was filed.

The suit was contested by the appellant-respondent and it was claimed that the suit was barred by the principles of res judicata. It was also claimed that there was litigation inter se the parties regarding the same suit land which was decided by the Court of Assistant Collector Ist Grade, Taran Taran in which the plaintiff and defendants were held to be owners of half share. The said judgment was claimed to have attained finality. The other allegations of the plaint were also denied. It was also claimed that the defendant-appellant was entitled to half share of the suit property. The marriage of Ghasita Singh with Dalip Kaur was denied.

In the replication, the plaintiff-respondent reiterated the

averments made in the plaint and denied the averments made in the written statement. On the pleadings of the parties the following issues were framed:-

1. Whether Ghasita Singh gave his ½ share of the suit land to the plaintiff in a family arrangement? OPP

2. whether the plaintiff is owner in possession of the suit property? OPP

3. If issue No.1 and 2 are proved,whether the plaintiff is entitled to the declaration and injunction as prayed for? OPP

4. Whether the suit is not maintainable in the present form?OPD

5. Whether the suit is barred b y the principles of res judicata? OPD

6. Relief.

Issues No.1 to 3 were taken up together by the learned Trial Court and the same were decided against the plaintiff-respondent, whereas issue No.4 was decided in favour of the plaintiff-respondent. Issue No.5 was decided in favour of the defendant and it was held that the suit was barred by the principles of res judicata. Consequently, the suit was dismissed.

The plaintiff-respondent challenged the judgment and decree in appeal before the learned Additional District Judge, Amritsar. The learned Additional District Judge, Amritsar came to the conclusion that as respondent Dhiro had claimed herself to be the daughter of Ghasita Singh the fact which was disputed, therefore, it was necessary to fame the

following issues to arrive at the right decision on the suit on merit:

"3-A. Whether Dhiro is the daughter of Ghasita Singh? OPD"

In view of the additional issue having been framed a report on the said issue was called from the learned trial Court.

Mr. Munishwar Puri, learned counsel appearing on behalf of the appellant has challenged the judgment passed by the learned Additional District Judge, Amritsar primarily on the ground that there was no necessity to frame additional issue as the plaintiff-respondent had claimed share of Ghasita Singh in the land on the basis of family settlement which he failed to prove. As the plaintiff was to stand on his own legs and could not claim relief on the basis of weakness of the defendant, there was no necessity to frame an issue as the plaintiff-respondent has not claimed the right to property on the basis of inheritance as he had taken a specific stand that Ghasita Singh was still alive. Issue Nos. 1 to 3 having been decided against the plaintiff there was no necessity to frame any other issue. The second contention of the learned counsel for the appellant was that the suit was filed by Dhiro against Sadhu Singh in the Court of Sub Divisional Magistrate, Taran Taran which was decided in favour of Dhiro vide order Ex.D.5. In the said suit filed for rendition of accounts, the appellant was held to be the daughter of Ghasita Singh thus entitled to inherit the property of Ghasita Singh. The said finding would operate as res judicata between the parties. The contention of the learned counsel for the appellant was that finding on issue No.5 by the learned Trial Court was right and therefore, there was no necessity to frame any additional issue. In support of this contention, the learned counsel for the appellant relied upon the Division

Bench judgment of this Court in **Ram Sarup s/o Telu Ram Jain Aggarwal Vs. Ram Chander and others AIR 1976 Punjab and Haryana 246,** wherein it has been held as under:-

> "`17. Ram Sarup filed a civil suit for possession of Khasra No.1525 on October 14, 1943, against Ram Chander on the allegation that he had purchased the occupancy rights of this land from the Official Receiver and was consequently entitled to get possession of the land as an occupancy tenant. Ram Chander resisted this suit on various grounds. He pleaded that the sale by the Official Receiver in favour of Ram Sarup was invalid and that the previous decision between the parties operated as res judicata on this point. The suit was decreed by the trial Court. However, this decree was set aside on appeal by the Senior Sub Judge on the question of res judicata and the suit was dismissed. Against this decree of the first Appellate Court, Ram Sarup filed an appeal in the Lahore High Curt, which was dismissed by a learned Single Judge. Ram Sarup then filed Letters Patent Appeal. One of the points raised on behalf of Ram Sarup plaintiff appellant was that the suit involved a question relating to setting aside of the transfer of occupancy rights at the instance of the landlord and it was not triable by the Civil Court and it is triable by the Revenue Court. It was also urged that the suit of Ram Chander under Section 60 of the Punjab Tenancy Act to cancel the sale of occupancy rights by the Official Receiver in his favour had

been dismissed by the Revenue Court as time barred and,therefore, his plea that the sale in his (Ram Sarup's) favour is invalid is barred by res judicata. On these facts, the Division Bench, which decided this appeal and which is reported as Ram Sarup V. Ram Chander, AIR 1949 EP 29 held as follows:-

> "It is true that the Limitation Act contemplates suits of the kind mentioned in Section 60, Punjab Tenancy Act, to avoid the transfer of occupancy rights in contravention of provisions of Chapter V, and prescribes a period of Limitation therefor, but from this it cannot be concluded that the intention of the Legislature was that when a landlord wishes to exercise his option given to him by Section 60 and avoid a transfer made without his content or in contravention of the provisions of law, he can do so only by a suit.
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> Where the landlord is in possession and is sued for possession by the transferee, he can raise the plea as a defendant that the transaction is voidable by him, his consent not having been obtained to it, and that he avoids it. Dismissal of his previous suit for avoiding the transfer, as having been barred by limitation, does not bar the plea in defence. Limitation bars the remedy and does not destroy the right. The only cases where a man loses not only the remedy but also the right by his failure

to bring an action are those falling under Section 38, Limitation Act."

It was further held as sunder:

" Under proviso to Section 77 (3) (Punjab Tenancy Act) where in a suit cognizable by an instituted in a civil Curt it becomes necessary to decide any matter which can under sub-section (3) to Section 77 be heard and determined only by a Revenue Court, Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order 7, Rule 10, Civil Procedure Code and return the plaint for presentation to the Collector. Where the suit instituted in the Civil Court did not fall in the category of suits mentioned in clause (h) of sub-section, (3) of Section 77, but the plea raised by the defendant landlord that the sale was not binding upon him and should, therefore, be set aside, made it necessary for the Court to decide the matter which could only be heard and decided by a Revenue Court under sub-section (3). Held that the case came within the ambit of the proviso to Section 77 (3) and the proper procedure was to return the plaint as laid down therein."

The plaint was then returned to Ram Sarup plaintiff for presentation to the Revenue Court. He presented the same to the Sub-Divisional Officer, Sonepat Shri B.S.Manchanda, Sub-

Divisional Officer, (Civil) Sonepat, by his judgment dated September 24, 1951, whose copy is Exhibit D-18, set aside the sale by the Official Receiver by Public auction in favour of Ram Sarup, as the provisions of Section 55 of the Punjab Tenancy Act, were not complied with and dismissed this suit. The appeal and the revision filed by Ram Sarup before the Collector and the Commissioner respectively were also dismissed. Ram Sarup then filed a further revision in the Court of the Financial Commissioner, who dismissed the same on September, 22, 1956, vide copy of the order Exhibit D-1. After the dismissal of his revenue suit, Ram Sarup filed Civil Writ PetitionNo.69 of 1957 in this Court, which was dismissed on October 25, 1957, and the copy of that judgment is Exhibit D-2. The only pint pressed in the writ petition was that the point of res judicata was not decided by the Financial Commissioner and this contention was repelled. It is well settled law that the decision of a Court of Special jurisdiction (Revenue Court) will be res judicata in a Court of general jurisdiction (Civil Court) provided the decision of the court of special jurisdiction was within the jurisdiction of that Court. A revenue Court's decision is binding on the Civll Court so far as the issue raised before it is raised again in the Civil Curt. Vide Daulat Ram Vs.Munshi Ram, AIR 1932 Lah 623. In the instant case the suit was triable by the Revenue Courts and the decision dated September 24, 1951, of the Assistant Collector Ist Grade, copy

whereof is Exhibit D-18, which was maintained by the superior Revenue Courts, that the sale of the occupancy rights of the land in suit by the Official Receiver in favour of Ram Sarup plaintiff-appellant was invalid and was set aside, operates as res judicata in this case."

On the other hand Shri A.S.Gill, learned counsel for the plaintiff-respondent argued that the finding of the learned Trial Court on issue No.5 could not be sustained as the learned Trial Court had come to a positive conclusion that though adverse inference was drawn against the plaintiff-respondent for concealing the proceedings before the revenue courts still it came to the conclusion that the decisions of the revenue court are not res judicata and finding on issue No.5 was therefore, contrary to the observations made while deciding issue No.3 against the plaintiff-appellant. The learned counsel for the respondent placed reliance on a judgment of Hon'ble Supreme Curt in **Joginder Pal Vs. Indian Red cross Society 2000 (4) RCR (Civil) 712** to contend that finding recorded by the court in a proceeding which are summary in nature would not operate as res judicata in the subsequent suit where the question of title is involved. He also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Pandurang Ramechandra Mandlik (deceased) by his Lrs and ors. Vs. Smt. Shantabai Ramchandra Gharge and ors 1989 (2) RCR 350** to contend that the proceedings of summary nature and not falling within the definition of suit even would not operate as res judicata. The contention of the learned counsel for the respondent, therefore, was that as the finding of res judicata cannot be sustained in view of the pleadings of the parties, it

was necessary to frame additional issue as framed by the learned lower Appellate Court and therefore, the order is required to be upheld.

Learned counsel thereafter contended that even otherwise it was incumbent upon the courts to have framed an issue which arose out of the pleadings of the parties and once the plaintiff-respondent had asserted in the plaint that the appellant-defendant was not the daughter of Ghasita Singh, issue was required to be framed and the error of learned Trial Court stood corrected by the learned lower Appellate Court which does not call for any interference by this Court.

I have heard the learned counsel for the parties and find force in the contention raised by the learned counsel for the appellant.

The bare reading of the suit shows that the plaintiff had claimed right to the property on the basis of a family settlement which he failed to prove. Even otherwise, the plaintiff had claimed Ghasita Singh to be still alive and therefore, there was no question of inheritance. It may further be noticed that the plaintiff had not challenged the judgment passed by the revenue court which was given in a suit filed under the Punjab Land revenue Act for rendition of accounts.

The Division Bench of this Court in the case of **Ram Sarup's case (supra)** has held that the finding recorded by the learned revenue Court would operate as res judicata and therefore, the challenge to finding on issue No.5 cannot be prima facie sustained. The suit as framed did not require the framing of additional issue as the plaintiff was to stand on his own legs and not on the weakness of the defendant-respondent.

In view of what has been stated above the order passed by the

learned Additional District Judge Amritsar cannot be sustained. Accordingly the appeal is allowed and the impugned order is set aside and the case is remanded back to the learned Additional District Judge, Amritsar to decide the appeal on merit.

The parties through their counsel are directed to appear before the learned Additional District Judge, Amritsar on 14.12.2006.

(Vinod K.Sharma)
Judge

15.11.2006
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